

STATE OF MICHIGAN
COURT OF APPEALS

BRISTOL WEST INSURANCE COMPANY,

Plaintiff-Appellee,

v

JAMES R. GONZALEZ, JR., and JENNIFER
DIBBLE,

Defendants-Appellants.

UNPUBLISHED

January 16, 2007

No. 270527

Macomb Circuit Court

LC No. 2005-001361-CK

Before: Zahra, P.J., and Cavanagh and Schuette, JJ.

PER CURIAM.

Defendant James R. Gonzalez, Jr., was denied first-party no-fault benefits by plaintiff Bristol West Insurance Company following a motor vehicle accident. The trial court granted summary disposition in plaintiff's favor on the basis that defendant was an owner of the vehicle who failed to obtain the security required by MCL 500.3101, and, further, that he was not an innocent third-party to his fiancée, Jennifer Dibble's misrepresentations. We affirm.

I. FACTS

On October 30, 2002, Dibble applied for insurance with plaintiff, listing her mother's address, which was her residence at the time. The two vehicles listed under the policy were a 2002 Ford Ranger, leased under the names of Gonzalez and Dibble, and the 1991 Ford Ranger of which Dibble alone was the title owner. Gonzalez was not named on the application as a regular operator or owner of either vehicle, even though he was the primary driver of the 1991 Ford Ranger.

On December 1, 2004, Dibble again applied for insurance with plaintiff because there had been a lapse in the policy due to non-payment of premiums. Dibble once again listed her mother's address on the application, even though she and Gonzalez had been cohabiting at the home that they had jointly purchased in 2003. Dibble failed to list Gonzalez as an owner, household resident, or regular operator of either vehicle on the application. Gonzalez continued to be the primary driver of the 1991 Ford Ranger and was named on the lease of the 2002 Ford Ranger to which he had access at the time of this second application with plaintiff.

After the lease expired on the 2002 Ford Ranger, Dibble and Gonzalez jointly purchased a 2002 Dodge Durango. Gonzalez remained the primary driver of the 1991 Ford Ranger, and he also had a key and access to the 2002 Dodge Durango.

On December 24, 2004, while operating the 1991 Ford Ranger pickup truck, Gonzalez was involved in an accident. As a result of the accident, Gonzalez apparently suffered serious injuries, including paraplegia.

Gonzalez applied for and was denied personal injury protection (PIP) benefits because Dibble had made material misrepresentations in obtaining insurance coverage from plaintiff. On April 4, 2005, plaintiff filed a complaint for declaratory relief in the Macomb Circuit Court, claiming that the policy was void *ab initio* because of Dibble's material misrepresentations. The trial court granted summary disposition in plaintiff's favor on the basis that defendant was an owner of the vehicle who failed to obtain the security required by MCL 500.3101, and, further, that he was not an innocent third-party to Dibble's misrepresentations. Gonzalez appeals as of right.

II. SUMMARY DISPOSITION

Gonzalez argues that the trial court erred in granting plaintiff's motion for summary disposition. We disagree.

A. Standard of Review

We review de novo a trial court's decision regarding summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). When deciding a motion for summary disposition under MCR 2.116(C)(10), we consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party, *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004), and all reasonable inferences are to be drawn in favor of the nonmovant, *Scalise v Boy Scouts of America*, 265 Mich App 1, 10; 692 NW2d 858 (2005).

B. Analysis

The Michigan no-fault act provides that "[t]he owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance." MCL 500.3101(1). Under the statute, an "owner" is defined as "[a] person renting a motor vehicle or having the use thereof, under a lease or otherwise, for a period that is greater than 30 days." MCL 500.3101(2)(g)(i). More than one person can be considered the owner of a vehicle for purposes of MCL 500.3101(2)(g). *Arndt v Titan Ins Co*, 233 Mich App 685, 691-692; 593 NW2d 215 (1999). Plaintiff argues that Gonzalez was an "owner" of the 1991 Ford Ranger at the time of the accident and that he is precluded from receiving no-fault benefits because he failed to obtain the necessary security required by MCL 500.3101(1). We agree.

Gonzalez was an "owner" of the 1991 Ford Ranger because he had actual use and the right to use the vehicle. MCL 500.3101(2)(g)(i). And under MCL 500.3113(b), the owner of a

vehicle who does not maintain insurance as required is not entitled to receive PIP benefits. We reject Gonzalez's argument that because the vehicle was insured by Dibble, he is entitled to benefits. MCL 500.3101(1), when read in conjunction with MCL 500.3009 and MCL 500.3113(b), does not excuse the owner of a vehicle from maintaining insurance on the vehicle if another owner of the same vehicle has obtained insurance. As stated above, MCL 500.3113(b) expressly precludes an uninsured owner from obtaining personal protection insurance benefits. Gonzalez cannot avoid the express statutory preclusion of personal protection insurance benefits by claiming to have used the vehicle with the permission of the insured, Dibble. MCL 500.3009. As an owner of a vehicle, Gonzalez would never need permission to use it. Therefore, we conclude that because Gonzalez did not maintain insurance on the vehicle as required by MCL 500.3101(1), he was not entitled to PIP benefits under the policy issued by plaintiff, and the trial court did not err in granting plaintiff summary disposition on those grounds.¹

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Bill Schuette

¹ In light of our conclusion, we need not reach defendant's argument that issues of fact remain as to whether he is an innocent third-party to the material misrepresentations made to plaintiff by Dibble.